IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REGINA BROWN	:	CIVIL ACTION
	:	
v.	:	
	:	
SUNOCO LOGISTICS PARTNERS, L.P.	:	NO. 05-2262

MEMORANDUM

Padova, J. **May 10, 2006**

Plaintiff, Regina Brown, has brought this action against her former employer, Sunoco Logistics Partners, L.P. ("Sunoco"), asserting claims for race and sex discrimination in employment pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*; 42 U.S.C. § 1981; and the Pennsylvania Human Relations Act, 43 Pa. Stat. § 951, *et seq*. (the "PHRA"). Before the Court is Defendant's Motion for Summary Judgment. Oral argument was held on the Motion on April 25, 2006. For the reasons that follow, Defendant's Motion is granted.

I. BACKGROUND

Plaintiff was hired by Sunoco to be a Quality Assurance Coordinator ("QAC") on January 20, 2004. (Def. Ex. C.) Sunoco provides pipeline and logistics services for petroleum products. (Statement of Undisputed Facts ¶ 1.) QACs are responsible for ensuring that all product entering and leaving the system "meets product specifications as defined by Sunoco Logistics and [meets] all regulatory requirements." (Fischer-Gressman Dep. at 31.) QACs perform these functions through general sampling and testing. (Id.) Plaintiff was hired by Paula Fischer-Gressman, who supervises all QACs for Sunoco and has the sole authority to hire and fire QACs. (Id. at 8-9, 19.) After Plaintiff began working for Sunoco, Fischer-Gressman explained Sunoco's anti-discrimination and anti-harassment policies to Plaintiff and told her "if anyone harasses you or, you know, I don't

stand for any kind of harassment or sexual harassment or if anybody gets on you about color, you let me know and I'll handle it because I don't tolerate that . . . ." (Pl. Dep. at 78.) Plaintiff was also provided with copies of Sunoco's equal employment opportunity, sexual harassment, harassment, and non-retaliation policies and informed about Sunoco's employee hotline. (Pl. Dep. at 70-71, 75, 78, 80-81; Def. Ex. M.)

Plaintiff started working for Sunoco on February 23, 2004. (Def. Ex. F.) At Sunoco, newly hired QACs undergo a probationary period, which generally consists of four to six weeks of training, and then must pass a Quality Assurance Coordinator Qualifications Examination (the "QAC exam"). (Fischer-Gressman Dep. at 21-22.) During Plaintiff's probationary period, she was trained by QAC Michael McGowan (from February 23, 2004 to April 8, 2004) and QAC Hossni Hossni (from April 9, 2004 to May 27, 2004). (Fischer-Gressman Dep. at 19; Pl. Dep. at 83, 91, 106; Def. Ex. G.) QAC training is done on the job, the trainer teaches the new QAC how to run the instruments, pull samples, run tests, and react to the resulting data. (Fischer-Gressman Dep. at 20.) The trainer also assesses the abilities of the trainee during the probationary period. (Id. at 21.) Plaintiff contends that both McGowan and Hossni sexually harassed her and that Hossni also treated her differently than he would have treated other QACs on the basis of her race and sex. She also maintains that the training she received from McGowan and Hossni was inadequate.

Fischer-Gressman monitored Plaintiff's training in April and May 2004 to find out if she had completed her training and was prepared for the QAC exam. On April 6, 2004, Fischer-Gressman sent Plaintiff an e-mail, asking how much more training Plaintiff believed she needed before she could be "solo." (Def. Ex. I.) Plaintiff responded that she was only 35% complete and had only skimmed written QAC materials provided to her by Sunoco. (Id.) However, she also stated that she

believed that, with additional training with Hossni, she would be able to "go solo" by May 10. (Id.) On April 25, 2004, Fischer-Gressman e-mailed Plaintiff and Hossni, asking whether Plaintiff would be able to take the QAC exam on May 5 or 6, so that Plaintiff could "go solo" on May 10. (Def. Ex. J.) Hossni responded that Plaintiff would like to take the exam on May 6, but needed extra training because she did not have the speed to do the job on her own. (Id.) Plaintiff separately notified Fischer-Gressman that she would be able to take the exam on May 6 but needed additional training before she would do the QAC job on her own. (Id.) Based on these responses, Fischer-Gressman decided to delay Plaintiff's QAC exam until she had completed additional training. (Id.)

Fischer-Gressman met with Plaintiff twice in May to discuss her progress. (Pl. Dep. at 132.) The first meeting took place on May 6, 2004. (Id.) Fischer-Gressman asked Plaintiff for a self-assessment of her progress, and informed Plaintiff that she had been told that Plaintiff was not fast enough. (Id.) Plaintiff informed Fischer-Gressman of the steps she was taking to become faster and Fischer-Gressman responded in an encouraging manner. (Id. at 132-33.) The second meeting took place on May 19, 2004. (Id. at 132.) Fischer-Gressman again told Plaintiff that her trainers had expressed concerns about her speed. (Id. at 133-34.) She also discussed the QAC exam with Plaintiff. (Id. at 134.) Fischer-Gressman also asked Plaintiff how she felt about the job and was positive but not as encouraging as she had been on May 6. (Id.) During the second meeting, Plaintiff told Fischer-Gressman that she was comfortable with everything, and Fischer-Gressman scheduled her QAC exam. (Pl. Dep. at 135.) Plaintiff did not complain to Fischer-Gressman about her training or the manner in which she was treated by McGowan or Hossni during either of these meetings. (Fischer-Gressman Dep. at 78.)

Fischer-Gressman notified Plaintiff by e-mail of the date, place and time of the QAC exam.

(Id.) QAC exams are always taken in the laboratory where the QAC is assigned. (Fischer-Gressman Dep. at 90.) Plaintiff's exam was scheduled for Sunoco's Point Breeze laboratory on May 24, 2004, during her regularly scheduled shift. (Id. at 136.) Ken Mountain, another QAC, proctored Plaintiff's exam. (Id. at 137.) Prior to the exam, Mountain had always acted in a friendly and professional manner towards Plaintiff. (Id. at 138.) Mountain had known Hossni for approximately four years prior to Plaintiff's exam. (Hossni Dep. at 17.)

The QAC exam given to Plaintiff had two parts, a written part and a performance part. (Id.) Mountain told Plaintiff that she had four hours to complete the entire exam. (Id.) Plaintiff was able to use a QAC handbook and another reference tool during the exam. (Id. at 142.) Plaintiff took the exam at a desk in the control room where the QACs perform their work. (Id.; Fischer-Gressman Dep. at 90-91.) Defendants maintain that Plaintiff took four hours to complete the written portion of the exam and did not take the performance portion because she ran out of time. (Fischer-Gressman Dep. at 65; Def. Exs. K, L; Mountain Dep. at 13-14, 20.) Plaintiff believes that she finished the written portion of the exam in closer to two hours and then checked her answers. (Pl. Dep. at 146-47.) She then asked Mountain to test her on the performance portion of the examination. (Id. at 147.) Mountain asked her whether she knew how to do each of the performance elements, she responded that she did, and he told her not to worry about it and left. (Id. at 147-48.) Mountain did not give Plaintiff credit for the performance portion of the examination. (Def. Ex. L.)

Mountain informed Fischer-Gressman the next day that Plaintiff did not finish the QAC exam in the allotted four hours. (Def. Ex. K.) Mountain gave Plaintiff's exam a grade of 59%; she received no credit for the performance portion of the exam. (Def. Ex. L.) Fischer-Gressman reviewed the exam after Mountain graded it. (Fischer-Gressman Dep. at 71-72.) Plaintiff needed

to answer 70% of the questions correctly, including the performance portion, in order to pass the exam. (Id. at 36.) Plaintiff was the first person to fail the QAC exam. (Id. at 76.) On May 27, Fischer-Gressman terminated Plaintiff's employment because she had failed the QAC exam and had performance issues. (Pl. Dep. at 162-64; Fischer-Gressman Dep. at 94-95.) The decision to fire Plaintiff was made by Fischer-Gressman, who spoke with Sunoco's Human Resources Department and her manager about her decision. (Fischer-Gressman Dep. at 95.) No one else had input into the decision to fire Plaintiff. (Id. at 94.)

Plaintiff contends that she was subjected to disparate treatment race and sex discrimination, sexual harassment resulting in a hostile work environment, and retaliation, in violation of 42 U.S.C. § 1981, Title VII and the PHRA, which resulted in her termination. Defendant has moved for summary judgment on all of these claims on the grounds that the record before the Court does not contain sufficient evidence to support any of Plaintiff's claims.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] . . . which it believes demonstrate an absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met its burden, the non-moving party must go beyond the pleadings and set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). "The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly

supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue is "material" if it may affect the outcome of the matter pursuant to the underlying law. Id. An issue is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

III. DISCUSSION

A. Race and Sex Discrimination - Disparate Treatment

Count I of the Complaint alleges that Plaintiff was discriminated against on the basis of her race and sex because she was treated differently than similarly situated employees who are not members of her protected class, in violation of Title VII. Count IV asserts that the same discriminatory treatment violated the PHRA. Count III of the Complaint states that the alleged race discrimination also violated 42 U.S.C. § 1981. Plaintiff concedes that she does not have direct evidence of discrimination on the basis of her race and sex and that the three-step burden shifting analysis developed by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), applies to her race discrimination claim brought pursuant to Section 1981 and to her race and gender discrimination claims brought pursuant to Title VII and the PHRA.

Under the McDonnell Douglas analysis, the plaintiff bears the initial burden of establishing a prima facie case of discrimination. Sarullo v. U.S. Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003), cert. denied 541 U.S. 1064 (2004). If the plaintiff establishes a prima facie case of discrimination, the burden of production shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. (quoting McDonnell Douglas, 411 U.S. at 802). If the defendant meets its burden, "the burden of production rebounds to the plaintiff, who must now show, by a preponderance of the evidence, that the employer's explanation is pretextual." Fuentes v.

Perskie, 32 F.3d 759, 763 (3d Cir. 1994).

In order to establish a prima facie case of race and gender discrimination, the Plaintiff must show the following: (1) that she "is a member of a protected class"; (2) that she "is qualified for the position"; and (3) that she suffered an adverse employment action (4) "under circumstances that give rise to an inference of unlawful discrimination such as might occur when the position is filled by a person not of the protected class." Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410-11 (3d Cir. 1999) (quotation omitted). Defendant argues that it is entitled to summary judgment on Plaintiff's claims for race and sex discrimination because she cannot establish that she was qualified for the position of QAC and that she was fired in circumstances that give rise to an inference of unlawful discrimination.

Defendant maintains that Plaintiff cannot establish that she was qualified for the QAC position because, after more than two months of training, she was having trouble completing tasks in a timely fashion and because she failed the QAC exam. Plaintiff contends that there is evidence on the record that she was qualified for the QAC position. Plaintiff relies on the deposition testimony of Fischer-Gressman, who stated that she was satisfied with Plaintiffs' qualifications for the position when she was hired. (Fischer-Gressman Dep. at 19.) Plaintiff also relies on the e-mail which was sent by Hossni to Fischer-Gressman on April 28, 2004, in which he stated that Plaintiff "knows all she need[s] to run the show," but also noted that Plaintiff was not fast enough to be able to complete all of her work. (Def. Ex. J.) Plaintiff also blames any lack of qualifications on Hossni and McGowan, contending that any problems she had were a result of poor training. Plaintiff relies on an e-mail sent by McGowan to Fischer-Gressman on April 8, 2004, listing areas which he had not yet covered with Plaintiff. (Def. Ex. G.) Hossni covered those areas with Plaintiff prior to April

30, 2004, on which date he sent an e-mail to McGowan, stating that: "All listed items has [sic] been covered . . . Speed not included . . . Time management is away [sic] behind . . . working on it . . [.]." (Def. Ex. G, ellipses in original.)

Defendant also argues that Plaintiff has not identified any evidence which would demonstrate that her employment was terminated under circumstances that give rise to an inference of race or sex discrimination. "The most common way that a plaintiff can raise an inference of discrimination is by presenting evidence that she was treated differently from other similarly-situated employees." King v. School Dist. of Philadelphia, Civ.A.No. 00-2503, 2001 WL 856948, at * 4 (E.D. Pa. July 26, 2001). When asked at her deposition to provide the basis for her claim that she was terminated because of her race, Plaintiff responded that "the first claim is I was the only African-American woman out of 13 quality assurance coordinators and the second one was Hossni's treatment towards me." (Pl. Dep. at 166.) Plaintiff has admitted, however, that there was one male African-American QAC while she was employed by Sunoco. (Id.) Plaintiff was also asked why she believed Hossni discriminated against or harassed her on the basis of her race. (Id. at 167.) She responded that she "felt because of his negative harassing bully treatment that he did not like African-American women." (Id.) When asked specific questions about Hossni's behavior, Plaintiff admitted that Hossni never made any comments relating to her race and did not use racially derogatory terms. (Id.) Plaintiff's unsupported belief that Hossni was motivated by racial discrimination is insufficient to support an inference of racial discrimination. King, 2001 WL 856948 at *4 ("Plaintiff's conclusory and unsupported beliefs are insufficient to create a genuine issue of material fact as to Defendants' motivation or support an inference of discrimination based on race or gender."). Plaintiff also claims that she was treated differently because of her race when she was denied an American Express card

and a Visa "purchase card." (Id. at 168.) However, Plaintiff does not claim that Sunoco issued either of those cards or was responsible for her being denied those cards. (Id. at 168, 171.) Plaintiff acknowledges that she received a Sunoco gas card. (Id. at 172.) Plaintiff also admits that American Express denied her credit application because of her credit history. (Id. at 174.)

Plaintiff does not allege that Fischer-Gressman, who made the decision to terminate her, discriminated against her on the basis of her race. Indeed, Plaintiff stated at her deposition that she had a good relationship with Fischer-Gressman, who was always friendly and acted professionally towards her. (Id. at 134.) Plaintiff has not identified any other evidence on the record which supports the proposition that she was fired in circumstances that give rise to an inference of unlawful race discrimination. The Court finds that the Plaintiff has failed to satisfy her burden of producing evidence which could establish that she was fired under circumstances which create an inference of race discrimination. Consequently, regardless of whether Plaintiff was qualified for the QAC position, she has failed to establish a prima facie case of race discrimination. The Court further finds, therefore, that there are no genuine issues of material fact regarding Plaintiff's claim of race discrimination in violation of Title VII, Section 1981 and the PHRA.

Defendant also argues that Plaintiff has not produced any evidence which would demonstrate that her employment was terminated under circumstances that give rise to an inference of sex discrimination. Defendant argues that Plaintiff cannot establish a prima facie case of sex discrimination since she was hired by a female supervisor, Fischer-Gressman, who also made the decision to terminate her. Cf. Turgeon v. Marriott Hotel Servs, Inc., Civ. A. No. 99-4401, 2000 WL 1887532, at *8 (E.D. Pa. Dec. 27, 2000) (noting that where the person who made the final decision to terminate a plaintiff was the same race as the plaintiff, that fact undercuts the plaintiff's ability

to establish a prima facie case of discrimination). Defendant also argues that, while Plaintiff contends that Hossni treated her differently than other QACs because of her sex, there is no evidence that he played any role in her termination.[1]

Plaintiff claims that Hossni sexually harassed and discriminated against her by taking a note pad out of her hand and throwing it on to a desk. (Id.) This incident occurred the first time Plaintiff trained with Hossni. (Id. at 114.) She was taking notes and he told her that she should not need to write things down, that she should just keep information in her head or write it on her glove, and he took her notebook and threw it. (Id.) Plaintiff believes that Hossni would not harass or bully a man in that manner. (Id. at 198.) Hossni also turned the overhead lights off in their lab when they were working at night because they hurt his eyes, even though Plaintiff told him that she didn't like the lights off. (Id. at 199.) Plaintiff believes that he would not have done this if she were a man. (Id.) On another occasion, Hossni turned the radio on while Plaintiff was trying to study and would not turn the radio off until she had asked him to do so three or four times. (Id. at 200.) Plaintiff believes that Hossni would not have done that to a man. (Id. at 201.) There were also instances, when Plaintiff did not understand something Hossni was teaching her, that he told her he would "go get my stick." (Id. at 117, 202.) Plaintiff believes that these comments mean that Hossni has "a problem with women being in a managerial type superior, you know, role." (Id. at 117.) Plaintiff does not believe that Hossni would make comments about the stick to a man. (Id. at 202.) After the third or fourth time that Hossni made the stick comment to Plaintiff, she asked him what he meant and he said, "You can ask my kids what I mean by that, they know." (Id. at 118.) She took his response

[1]Defendant contends that Plaintiff was replaced by a woman, but has submitted no evidence in support of that contention.

to mean that he beats his children and wife if they don't perform the way he wants. (Id.) Hossni never mentioned his wife to Plaintiff in regard to the stick and never told her that he beats his children. (Id.) Plaintiff has no evidence that Hossni beats his children. (Id.) After the third or fourth time Hossni commented about the stick to Plaintiff, she asked him to stop doing so and he stopped. (Id. at 119.) On another occasion, around 2 a.m., when Plaintiff was at the main console in front of the window at Sunoco's Twin Oaks laboratory, Hossni snuck along the outside of the window and jumped in front of the window, making a scary face and frightening her. (Id. at 119-20.) When he later came inside, Plaintiff said, "Okay, you got me, you got me that time" and just let it go. (Id. at 120.) Hossni did not apologize to Plaintiff but Plaintiff believes that he did it to "show the passion that he had against me, that he wanted me to fail and he didn't like me." (Id.)

On two occasions, Plaintiff gave Hossni a ride when his car was being worked on and he said things to her that she believes were sexually discriminatory. On the first occasion, Hossni was having his car serviced and told Plaintiff that he was going to ride with her that day and that she was going to be his chauffeur." (Id. at 205.) Plaintiff believes that Hossni's comments were tied to her gender but admits that she has no evidence to support that belief. (Id. at 205-06.) On another occasion, when Plaintiff was driving Hossni to the Twin Oaks laboratory, he said: "Ah, these Republicans, these Democrats, . . . this country, . . . I don't vote." (Id. at 206.) Plaintiff believes that Hossni said this because of her gender. (Id. at 206-07.) As discussed above, Plaintiff's unsupported belief that Hossni was motivated by sex discrimination in these instances is insufficient to support an inference of sex discrimination. King, 2001 WL 856948 at *4.

Plaintiff also contends that the conditions of her QAC exam were poor, and that she was forced to sit for her examination at a dirty desk, in an ergonomically poor chair, in a room which was

too cold, and that she suffered interruptions during the exam. (Pl. Dep. at 140, 279.) However, she has presented no evidence that the conditions in which she took the exam were different than the conditions experienced by any other QAC while taking the exam or that she was subjected to those conditions because of her sex. In addition, although Plaintiff disagrees with Defendant's position that she ran out of time prior to completing her QAC exam, she has put forward no evidence, except for the fact that Mountain had known Hossni for four years prior to Plaintiff's exam, that Mountain was motivated by antipathy to Plaintiff's sex in proctoring or timing her examination. (Hossni Dep. at 17.)

The Court finds that Plaintiff has failed to satisfy her burden of producing evidence which would establish that she was fired under circumstances which create an inference of sex discrimination. Plaintiff has thus failed to establish a prima facie case of sex discrimination. Consequently, the Court further finds that there are no genuine issues of material fact regarding Plaintiff's claims of sex discrimination in violation of Title VII and the PHRA. Defendant's Motion for Summary Judgment is, accordingly, granted with respect to Plaintiff's claims of disparate treatment race and sex discrimination in Counts I, III, and IV of the Complaint.

B. Sex Discrimination - Hostile Work Environment

Count I of the Complaint alleges that Plaintiff was discriminated against on the basis of her sex because she was subjected to sexual harassment which created a hostile work environment in violation of Title VII. Count IV alleges that this hostile work environment also violated the PHRA. "Hostile work environment harassment occurs when unwelcome sexual conduct unreasonably interferes with a person's performance or creates an intimidating, hostile, or offensive working environment. In order to be actionable, the harassment must be so severe or pervasive that it alters

the conditions of the victim's employment and creates an abusive environment." Weston v. Pennsylvania, 251 F.3d 420, 425-26 (3d Cir. 2000) (citing Meritor Savs. Bank FSB v. Vinson, 477 U.S. 57, 65, 67 (1986) and Spain v. Gallegos, 26 F.3d 439, 446-47 (3d Cir. 1994)). The Third Circuit has developed a five-prong framework for evaluating claims of sexually hostile work environment under Title VII: "(1) the employee suffered intentional discrimination because of [her] sex, (2) the discrimination was pervasive and regular, (3) the discrimination detrimentally affected the plaintiff, (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position, and (5) the existence of respondeat superior liability." Id. at 426 (citing Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir.1990) and Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir.1999)). Defendant argues that it is entitled to the entry of summary judgment in its favor on this claim because Plaintiff cannot establish that she was subjected to a sexually hostile work environment.

Plaintiff contends that the following incidents created a sexually hostile work environment. When McGowan first met Plaintiff he repeatedly looked at her chest when he was talking to her. (Pl. Dep. at 178-79.) When Plaintiff was training with McGowan, he looked at her chest momentarily on a daily, or every other day basis. (Id. at 180.) Plaintiff was offended by this behavior but never asked him to stop. (Id.) Once, when Plaintiff and McGowan were eating together in a restaurant, she noticed that he was looking at a waitress who was wearing shorts. (Id. at 179.)

Plaintiff also contends that McGowan engaged in harassing behavior in connection with ordering a Nomex fire safety suit for Plaintiff. Plaintiff was to attend Fire Safety Training School as part of her QAC training in March 2004, but did not have a Nomex fire safety suit (a coverall

which is worn over the wearer's own clothes). (McGowan Dep. at 11-12.) McGowan offered to loan her his own dry-cleaned Nomex suit because the suits have to be mail ordered and he didn't want her to miss her scheduled training date. (Id.) Plaintiff turned down McGowan's offer, telling him: "I'm not wearing no other man's drawers, and so he says, you know, he said, Why can't you wear mine? They're clean, you know, I'll let you borrow them, and that's when I told him, I'm not going to wear any men's drawers." (Pl. Dep. at 182.)

McGowan then attempted to place a telephone order for a Nomex suit for Plaintiff. (Id. at 183, McGowan Dep. at 12.) Plaintiff contends that McGowan acted in a harassing manner with regard to that telephone call. Plaintiff testified regarding that conversation during her deposition as follows:

> Q. He was calling a manufacturer to order a Nomex suit for you?
>
> A. Yes.
>
> Q. While he was on the phone with that manufacturer they asked him for a chest size or a bra size; correct?
>
> A. Yes.
>
> Q. And then he asked you, in turn?
>
> A. Yeah. To my recollection, he said, I don't know what her chest size is. You know, he was answering, and then he said, Well, do you want to talk to them. I'm like, Yeah, let me talk to them. I said, Can I talk, can I call them from home because I felt embarrassed, what have you, like that. He said, No, we need to get this done now if we're going to have this suit ready for Fire Safety School.
>
> Q. Right.
>
> A. So I believe he handed me the phone then and then they asked, you know, I told the lady, I said, you know - -

> Q. It was a woman on the other end?
>
> A. Yes.
>
> Q. What did she say to you? What did you say to her?
>
> A. I told her, you know, because they were asking me what suit size do you wear. I said, I have no idea, . . . and so she had said, Well, you know, what size bra do you wear, and I told her what size I wore, and I was going back and forth . . . and he's right there.
>
> Q. He was still there?
>
> A. Yeah, he was still there, and so then we got off the phone. He says, A-ha, I thought, and he said laughingly, I thought for a minute there you were going to ask me to look in the back of the tag of your bra and ask me for your bra size.
>
> Q. What did you say in response to that?
>
> A. I said, No. I wasn't going to go there, something of that nature.
>
> Q. Was that the end of that?
>
> A. Um-hum.

(Pl. Dep. at 184-87.) McGowan did not make any other reference to bra size while Plaintiff worked with him. (Id. at 187)

On another occasion, McGowan rubbed Plaintiff's shoulder while he was explaining something to her about the logistics of how the gas was going in the pipes and saying "You're going to get it, you're going to get it." (Id.) McGowan rubbed Plaintiff's shoulder for approximately 10 seconds and then patted her three or four times on the back, near her shoulder blade. (Id. at 188, 191.) This made Plaintiff feel terrible, and she spoke to McGowan about it, saying: "You've got heavy hands." (Id. at 188.) McGowan then asked Plaintiff if he had hurt her and she told him that he "pat[s] kind of hard." (Id.) McGowan told Plaintiff that he was just trying to encourage her and

didn't mean anything by it, and she told him that he shouldn't have rubbed her. (Id. at 188-89.) McGowan was very regretful and asked Plaintiff to keep the incident between them. (Id. at 189.) Plaintiff believes that the rubbing and patting went along with McGowan's "lust problem" (as exemplified by his looking at her chest and looking at the waitress). (Id.) Plaintiff believes that McGowan's intent in rubbing her shoulder and patting her back was sexual because "he should not have ever touched a woman. You don't touch a woman." (Id.) She interpreted his actions as making a pass at her. (Id. at 190.) McGowan did not have any physical contact with Plaintiff after that incident and did not look at her chest again after that incident. (Id. at 192.)

On another occasion, McGowan told Plaintiff, when he came in to start a shift at 7:00 a.m., that, "I was in the shower this morning and I was thinking of ways how I could better train you." (Id. at 193-94.) Plaintiff did not complain about this comment and McGowan did not make any other shower related comments to Plaintiff. (Id. at 194.)

Plaintiff claims that Hossni used the "F" word in front of her when he was speaking with other men. (Id. at 196.) Plaintiff believes that he did this in order to harass and intimidate her. (Id.) Plaintiff complained to Hossni about his language and he told her: "This is how guys talk. He says, You're up here and you're in a plant. He said, You're going to have to get used to it. He said, I won't say anything anymore, he said, but he said, I can't control them. I can't tell them what to say." (Id. at 197.) Plaintiff heard him using the "F" word on the phone a couple of other times. (Id.) Plaintiff also relies on Hossni's behavior, which is discussed in detail above, regarding the note pad, the overhead lights, the radio, the references to the stick, making faces, and the comments Hossni made on the two occasions on which she gave him a ride, as evidence of a sexually hostile work environment.

Hossni also offended Plaintiff by asking her where she lived, whether she rented her home, and whether she was single. (Id. at 208-10.) Plaintiff believes that Hossni asked her these very personal questions in an attempt to intimidate her and play a head game with her. (Id. at 209.) McGowan also asked Plaintiff where she lived and whether she was married. (Id. at 207-08, 210.) Plaintiff did not tell either Hossni or McGowan that she thought these were inappropriate questions. (Id. at 210.)

Defendant contends that these incidents do not satisfy Plaintiff's burden of establishing that she was subjected to a sexually hostile work environment. When determining whether sexual harassment creates a hostile work environment, the Court considers: "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Diviny v. Village of Cottage Green, Inc., Civ.A.No. 03-5096, 2004 WL 2473424, at *4 (E.D. Pa. Nov. 1, 2004) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)). The Supreme Court has instructed that "simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998) (citing Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)). The Supreme Court has explained that Title VII is not intended to be a "'general civility code.'" Id. (quoting Oncale, 523 U.S. at 80). Title VII does not, therefore, apply to "complaints attacking 'the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.'" Id. (quoting B. Lindemann & D. Kadue, Sexual Harassment in Employment Law 175 (1992)). Moreover, "'verbal and physical harassment, no matter how unpleasant and ill-willed, is simply not prohibited by Title VII if not

motivated by the plaintiff's gender (or membership in other protected groups).'" Shramban v. Aetna, 262 F. Supp. 2d 531, 536 (E.D Pa. 2003), aff'd 115 Fed. Appx. 578 (3d Cir. 2004) (quoting Koschoff v. Henderson, 109 F. Supp. 2d 332, 346 (E.D. Pa. 2000)). The Court finds that the incidents relied on by Plaintiff as creating a sexually hostile work environment consist of isolated incidents, offhand comments, simple teasing, and occasional abusive language which were not sufficiently frequent or severe so as to create a hostile work environment. See Faragher, 524 U.S. at 788. The Court further finds, accordingly, that the evidence on the record of this Motion does not create a genuine issue of material fact regarding whether Plaintiff was subjected to a sexually hostile work environment in violation of Title VII and the PHRA and, consequently, thatDefendants are entitled to the entry of summary judgment in their favor on Plaintiff's hostile work environment claims pursuant to Title VII and the PHRA in Counts I and IV of the Complaint.

C. Retaliation

Count II of the Complaint asserts a claim of retaliation in violation of Title VII. "In the absence of direct evidence of retaliation, retaliation claims . . . typically proceed under the McDonnell Douglas framework." Fasold v. Justice, 409 F.3d 178, 188 (3d Cir. 2005) (citations and footnote omitted). Plaintiff must first establish a prima facie case by showing the following: "(1) he or she engaged in a protected employee activity; (2) the employer took an adverse employment action after or contemporaneous with the protected activity; and (3) a causal link exists between the protected activity and the adverse action." Weston v. Pennsylvania, 251 F.3d 420, 430 (3d Cir. 2001) (citations omitted). The burden then shifts to Defendant to "'articulate some legitimate, nondiscriminatory reason'" for terminating Plaintiff. Woodson v. Scott Paper Co., 109 F.3d 913, 920 n.2 (3d Cir. 1997) (quoting McDonnell Douglas, 411 U.S. at 802, Texas Department of

Community Affairs v. Burdine, 450 U.S. 248, 253 (1981), and Fuentes, 32 F.3d at 763). Defendant satisfies its burden if it "articulates any legitimate reason for the discharge; the defendant need not prove that the articulated reason actually motivated the discharge." Id. (citing Fuentes, 32 F.3d at 763.) If the Defendant satisfies its burden, the Plaintiff then has the burden of proving that the reason articulated by the Defendant is a mere pretext for the unlawful retaliation. Id.

Defendant argues that it is entitled to summary judgment on Plaintiff'sretaliation claim because Plaintiff did not engage in any protected activity. Protected activity encompasses making a formal complaint about discriminatory conduct to the EEOC or the employer. Pawlak v. Seven Seventeen HB Philadelphia No. 2, Civ.A.No. 99-5390, 2005 WL 696878, at *8 (E.D. Pa. Mar. 24, 2005) (citing Barber v. CSX Distrib. Servs., 68 F.3d 694, 702 (3d Cir.1995)). Protected activity also includes less formal complaints such as "'informal protests of discriminatory employment practices, . . . making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support of co-workers who have filed formal charges.'" Id. (quoting Sumner v. U.S. Postal Serv., 899 F.2d 203, 209 (2d Cir. 1990)). It is undisputed that Plaintiff did not bring a charge of discrimination before the EEOC before she was fired. It is also undisputed that Plaintiff never brought a formal or informal complaint about any incident of discrimination or harassment to anyone in Sunoco's Human Resources department, to any member of Sunoco's management, or to her supervisor Ms. Fischer-Gressman, and that Plaintiff never reported any such incidents by calling the Sunoco employee hotline. (Id. at 81-82, 123-24; Fischer-Gressman Dep. at 78.) The Court finds, therefore, that there is no evidence before the Court which would create a genuine issue of material fact regarding whether Plaintiff engaged in protected activity. As Plaintiff did not engage in protected activity, the Court further finds that Plaintiff has

not established a prima facie case of retaliation and that Defendant is entitled to the entry of summary judgment in its favor on Count II of the Complaint.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is granted in all respects. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

REGINA BROWN	:	CIVIL ACTION
	:	
v.	:	
	:	
SUNOCO LOGISTICS PARTNERS, L.P.	:	NO. 05-2262

O R D E R

AND NOW, this 10th day of May, 2006, upon consideration of Defendant's Motion for Summary Judgment, Plaintiff's response thereto, and the Hearing held on April 25, 2006, **IT IS HEREBY ORDERED THAT** said Motion is **GRANTED**. **JUDGMENT** is hereby entered in favor of Defendant and against Plaintiff.

BY THE COURT:

/s/ John R. Padova

John R. Padova, J.